

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

OWEN J. ROGAL, D.D.S., P.C.,

Plaintiff,

V.

SKILSTAF, INC.,

Defendant.

**CIVIL ACTION NO.
3:06-cv-00728-MHT**

FILED UNDER SEAL

INDEX TO EXHIBITS

In support of Defendant's Motion for Summary Judgment, Defendant Skilstaf, Inc. will submit contemporaneously herewith the Affidavit of Robert Johnson and, pursuant to the Protective Order entered by the Court on January 11, 2007, will submit contemporaneously herewith under seal the following exhibits.

Exhibit A: The Summary Plan Description for the Skilstaf Group Health Plan, Skilstaf-00001 through Skilstaf-00085.

Exhibit B: Excerpts from Skilstaf-00085 through Skilstaf-02129, which is the Administrative Record.

Respectfully Submitted,

s/Charles A. Stewart III

Charles A. Stewart III (STE067)
Bradley Arant Rose & White LLP
The Alabama Center for Commerce
401 Adams Avenue, Suite 780
Montgomery, AL 36104
Telephone: (334) 956-7700
Facsimile: (334) 956-7701
cstewart@bradleyarant.com

s/Amelia T. Driscoll

Amelia T. Driscoll (DRI016)
Bradley Arant Rose & White LLP
1819 Fifth Avenue North
Birmingham, AL 35203-2104
Telephone: (205) 521-8000
Facsimile: (205) 521-8800
adriscoll@bradleyarant.com

Attorneys for Defendant
Skilstaf, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 18th, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Robert E. Cole
437 Chestnut Street, Suite 218
Philadelphia, PA 19109

Beth A. Friel
Jeanne L. Bakker
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, PA 19109

and I hereby certify that I have mailed by U. S. Postal Service the document to the following non-CM/ECF participants: None.

/s/ Amelia T. Driscoll

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

OWEN J. ROGAL, D.D.S., P.C.,)

Plaintiff,)

v.)

SKILSTAF, INC.,)

Defendant.)

**CIVIL ACTION NO.
3:06-cv-00728-MHT**

AFFIDAVIT OF ROBERT JOHNSON

STATE OF ALABAMA)

TALLAPOOSA COUNTY)

Personally appeared before me, a Notary Public in and for said County and State, Robert Johnson, who being known to me, and first duly sworn, deposes and says:

1. My name is Robert Johnson. I am over the age of 21 and I am competent to make this affidavit. I have personal knowledge of the statements made herein unless otherwise noted, all of which are correct and true.

2. I am the Chief Benefits Officer at Risk Reduction, Inc. ("RRI"). RRI is the Plan Administrator for the Skilstaf Group Health Plan (the

“Plan”). As part of my responsibilities for RRI, I am familiar with RRI’s procedures for processing and administering claims for health coverage under group health plans, including the claim at issue herein. I am personally familiar with the manner in which RRI maintains files and records, including those that relate to Owen J. Rogal, D.D.S., P.C.’s (“Plaintiff”) claim for coverage of the costs it incurred in connection with its treatment of Dianna Berry. I am authorized to submit this Affidavit as a representative of RRI.

3. The documents attached hereto are kept by RRI in the regular course of business relative to claims for benefits, and such records are made at the time of the acts, transactions, occurrences and/or events reflected in the records, or within a reasonable time thereafter, by someone with personal knowledge of such acts, transactions, occurrences and/or events.

4. Attached hereto as Exhibit A, Skilstaf-00001 through Skilstaf-00085, is a true and correct copy of the summary plan description of the Plan. Dianna Berry’s husband, Dennis Berry, is an employee of Newspaper Processing, Inc. and, during the time relevant to the Complaint, was a participant in the Plan. Accordingly, during the time relevant to the Complaint, Skilstaf provided group health coverage under the Plan to Mr. Berry and to his wife, Mrs. Berry.

5. Attached hereto as Exhibit B, are true and correct copies of excerpts from Skilstaf-00085 through Skilstaf-02129, which is the Administrative Record maintained by RRI with respect to Plaintiff's claim for coverage

6. Plaintiff provided radiofrequency treatments to Mrs. Berry on twenty-five separate occasions between January and June 2005 to treat her alleged back, hip, jaw, ear, neck, and shoulder pain. In connection with its treatment of Mrs. Berry, Plaintiff ultimately submitted medical bills totaling \$189,900.00.

7. Intracorp Physician Consultative Service's Medical Director, Marsha M. Silberstein, M.D., conducted an independent review of Mrs. Berry's medical records in July 2005 for the purpose of providing an expert opinion concerning the nature, setting, duration and/or appropriateness of the health care services Plaintiff provided Mrs. Berry. See Skilstaf-00192-Skilstaf-00193. Specifically, Dr. Silberstein considered whether Plaintiff's radiofrequency treatments were medically necessary and whether Mrs. Berry's physical condition was improving as a result of Plaintiff's treatments. See id.

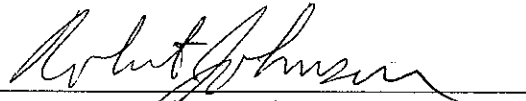
8. After conducting her independent review, Dr. Silberstein concluded that the "requested procedures [were] not medically necessary

for” Mrs. Berry and that “[t]here [wa]s no documentation of any improvement” in Mrs. Berry’s alleged condition. Skilstaf-00193.

9. Although RRI had mistakenly processed Plaintiff’s claims as an initial matter, RRI denied Plaintiff’s claims once it realized that Plaintiff’s radiofrequency treatments were not medically necessary and that those treatments had failed to improve Mrs. Berry’s physical condition.

10. Plaintiff has not submitted any documentation that refutes RRI’s determination, based on Dr. Silberstein’s independent review of Mrs. Berry’s medical records, that Plaintiff’s repeated radiofrequency treatments were not medically necessary.

I have read the foregoing Affidavit, ¶¶ 1-10, and I swear and affirm that it is true and correct to the best of my knowledge and belief.


Robert Johnson

Sworn to and subscribed before me
on this the 16th day of May, 2007.


NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 29, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS